

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI AT KANSAS CITY**

**IN RE: Kizine, Earl Lee**

**Case No: 10-41364**

**Kizine, Patricia Ann**

**DEBTOR(S)**

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**Mr. Earl Lee Kizine**

**Plaintiffs,**

**vs.**

**Adversary Number: 10-04072**

**GMAC Mortgage, LLC  
1100 Virginia Drive  
P.O. Box 8300  
Fort Washington, PA 19034**

**and**

**SUMMIT FINANCIAL LLC  
LORI SINISGALLI President  
POB 361  
SCIOTA PA 18354-45**

**Defendant.**

**ORDER SUSTAINING THE PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT  
ON COMPLAINT TO AVOID LIEN OF GMAC MORTGAGE LLC AND SUMMIT  
FINANCIAL LLC  
SECURED BY REAL PROPERTY PURSUANT TO 11 U.S.C. §506**

This matter comes on before the Court pursuant to the Plaintiff's Motion for Default Judgment on Plaintiff's Complaint to Avoid Lien of GMAC Mortgage LLC and Summit Financial LLC, Secured by Real Property Pursuant to 11 U.S.C. § 506. The Plaintiff(s), Mr. Earl

Lee Kizine, [hereinafter "Plaintiffs"], appears by and through his attorney, Rachel Lynn Foley.

There are no other appearances.

After reviewing the file and the pleadings herein, the Court finds for good cause shown:

1. That on 4/10/10, Plaintiff filed his Complaint to Avoid Lien of GMAC Mortgage LLC and Summit Financial LLC.
2. That on 4/12/10, the Clerk issued a summons and the Court issued its Pre-trial Order on same.
3. That on 4/16/10, Defendants were served with the summons and the adversary complaint via first class mail.
4. That no answers were timely filed.
5. That on 3/24/10, Debtors filed for relief under Chapter 13 of the Bankruptcy Code.
6. That pursuant to 11 U.S.C. § 301, this Honorable Court entered Its Order for Relief.
7. That jurisdiction of this Court is proper pursuant to 11 U.S.C. § 506, § 1322(b) and § 1325(a) and Bankruptcy Rule 7001. This matter is a core proceeding.
8. That Richard V. Fink was duly appointed the Chapter 13 Trustee in this matter.
9. That this Complaint concerns a prior, perfected deed of trust secured by debtor(s)' homestead. Said deed of trust, executed on or about 07/30/2003 in the approximate amount of \$140,061.00 to James B Nutter & Company. This deed of trust is recorded in Jackson County, Missouri as instrument number 2003I0091640 filed on 07/30/2003 as a DEED OF TRUST in the names of KIZINE EARL (+) with JAMES B NUTTER &

COMPANY and a legal description of CITY KANSAS CITY; SBD PEBBLE CREEK FIRST PLAT (LOTS 1-36) 06-6200 KC; LT 24-24.

10. The debtor(s)' interest in 13805 E 50th Street, Kansas City, MO 64133 is encumbered by a separate, second deed of trust by GMAC Mortgage 09/20/2004 in the approximate amount of \$50,000.

11. This deed of trust is recorded under the original creditor of Summit Financial LLC and is recorded in Jackson County, Missouri as instrument number 2004I0089432 and filed on 09/20/2004 as a DEED OF TRUST in the names of KIZINE EARL (+) **with** SUMMIT FINANCIAL LLC and a legal description of CITY KANSAS CITY; SBD PEBBLE CREEK FIRST PLAT (LOTS 1-36) 06-6200 KC; LT 24-24.

12. As of today's date neither Summit Financial LLC nor GMAC Mortgage, LLC has filed a proof of claim but there is approximately \$44,453 due and owing on the account.

13. As of today's date there is nothing filed with Jackson County, Missouri to show an assignment or a sale of the second original mortgage of Summit Financial LLC to GMAC Mortgage.

14. GMAC Mortgage LLC and Summit Financial LLC mortgage secured by real property located at 13805 E 50th Street, Kansas City, MO 64133, recorded in Jackson County, Missouri as instrument number 2004I0089432 and filed on 09/20/2004 as a DEED OF TRUST in the names of KIZINE EARL (+) **with** SUMMIT FINANCIAL LLC and a legal description of CITY KANSAS CITY; SBD PEBBLE CREEK FIRST PLAT (LOTS 1-36) 06-6200 KC; LT 24-24 therefore should be held void pursuant to 11 U.S.C. §506(d).

**IT IS THEREFORE, BY THE COURT ORDERED** that the Plaintiff's Motion for

Default Judgment on the Plaintiff's Complaint to Avoid Lien of GMAC Mortgage LLC and Summit Financial LLC, secured by real property and recorded under the original creditor of Summit Financial LLC and recorded in Jackson County, Missouri as instrument number 2004I0089432 and filed on 09/20/2004 as a DEED OF TRUST in the names of KIZINE EARL (+) with SUMMIT FINANCIAL LLC and a legal description of CITY KANSAS CITY; SBD PEBBLE CREEK FIRST PLAT (LOTS 1-36) 06-6200 KC; LT 24-24, Pursuant to 11 U.S.C. § 506 be and the same is hereby SUSTAINED.

**IT IS FURTHER BY THE COURT ORDERED** that the claims of GMAC Mortgage LLC and Summit Financial LLC shall be treated as general unsecured non-priority claims in the Chapter 13 bankruptcy proceeding.

**IT IS SO ORDERED.**

Dated at Kansas City, Missouri this 24th day of May, 2010

/s/ Jerry W. Venters  
Hon. Jerry W. Venters  
United States Bankruptcy Judge

Submitted by:  
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IS DIRECTED TO SERVE PARTIES OF  
INTEREST \*\*